IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 75-695

RAYMOND E. PRYOR, ETC.,
Petitioner,

v.

AMERICAN PRESIDENT LINES,
Respondent,

HENRY A. SACILOTTO,
Petitioner,

v.

NATIONAL SHIPPING CORPORATION, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit in the *Pryor* case is reported at 520 F.2d 974; the opinion in the *Sacilotto* case is reported at 520 F.2d 983. Both opinions are printed in the Appendix to the Petition. The District Court opinion in *Sacilotto,* is reported at 381 F. Supp. 558, a copy of which is printed in the Appendix to this Brief. A copy of the unreported District Court opinion in *Pryor* is printed in the Appendix to this Brief.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and the United States statutes involved are adequately set forth in the Petition.

QUESTION PRESENTED

Should the Supreme Court review particular factual applications of the Extension of Admiralty Jurisdiction Act to suits arising out of pierside injuries to longshoremen, when those facts fall within the ambit of this Court's holdings in *Victory Carriers v. Law,* and when the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act has rendered moot the issue of unseaworthiness as to subsequent cases?

STATEMENT OF THE CASE

Although the facts and issues in the *Sacilotto* and *Pryor* cases are similar, the context in which the legal issues are presented are different, and are separately described herein.

The Sacilotto Case

Petitioner Henry A. Sacilotto, a longshoreman, was injured in a gondola railroad car on a pier while assisting in the loading of steel billets onto a vessel on navigable waters.

Sacilotto contends that his injury was caused by the manner in which the billets had been loaded into the gondola car by the inland shipper. He concedes that the

loading of the billets was being performed in the normal manner, that the ship's gear was working properly, and that there was no defect or inadequacy in the tools and equipment being used. He testified that the cause of the accident was the failure of the inland shipper to have chocks between the billets in the gondola car. (See opinion of District Court, Appendix to Brief in Opposition, p. 2a.)

Sacilotto filed suit in the United States District Court for the District of Maryland seeking to invoke admiralty jurisdiction and diversity jurisdiction. The District Court dismissed the suit on its finding that it had neither diversity nor admiralty jurisdiction. Sacilotto has not challenged the ruling on the diversity issue. The United States Court of Appeals for the Fourth Circuit affirmed the decision of the District Court, finding that the injury was not, as required by the Extension of Admiralty Jurisdiction Act, 46 U.S.C. §740, *caused* by a vessel on navigable waters, and relying upon the Supreme Court's holding in *Victory Carriers, Inc. v. Law,* 404 U.S. 202 (1972).

The Pryor Case

Petitioner Raymond E. Pryor is the personal representative of Marion L. Stephens, a longshoreman who was injured on a gondola railroad car on the pier while assisting in the loading of coils of steel wire onto a vessel on navigable waters. He alleges that he was injured as a result of the defective banding of a coil by the inland shipper when that coil, which was next to coils which were being lifted from the gondola car by the winch, sprang open and knocked him off the gondola car. (Appendix to Petition, p. 5.)

After presentation of plaintiff's evidence at trial, the United States District Court for the District of Mary-

land found a complete failure of proof that would sustain any claimed unseaworthiness or any finding of negligence. (Appendix to Brief in Opposition, p. 14a.) The District Court decision stated that even if there had been proof of the defective condition of the cargo, there was no evidence that the ship actually accepted the coil which was alleged to be defective. (Appendix to Brief in Opposition, p. 13a.)

The District Court found admiralty jurisdiction and the defendant did not appeal that finding since it appeared that diversity jurisdiction was present. On March 17, 1975, the United States Court of Appeals for the Fourth Circuit issued an opinion reversing and remanding the case. Respondent American President Lines filed a Petition for Rehearing, contending that the Circuit Court misapprehended the decision of the District Court in that it failed to recognize that the District Court's holding was based on a complete failure of proof by the plaintiff. The United States Court of Appeals for the Fourth Circuit granted the rehearing and, in its subsequent decision, acknowledged that the District Court did not "find anything wrong with the coils". (Appendix to Petition, p. 6.)

In the *Pryor* case, the Circuit Court deemed it unnecessary to determine whether or not the District Court's finding of admiralty jurisdiction was correct, as the District Court had jurisdiction under the "savings to suitors" clause (Article III, Section 2, Clause 1, United States Constitution) and because diversity jurisdiction existed. (Appendix to Petitioner's Brief, p. 6.) The question decided by the Circuit Court is whether or not the federal maritime law applies to the *Pryor* case so that the plaintiff has a maritime cause of action for unseaworthiness. The Circuit Court held that the maritime law would only be applicable if the facts

found brought the injury within the scope of the Extension of Admiralty Jurisdiction Act, 46 U.S.C. § 740. (Appendix to Petition, p. 7.)

Therefore, the questions arising in both cases — admiralty jurisdiction in *Sacilotto,* and the application of maritime law in *Pryor* — required consideration of the Extension of Admiralty Jurisdiction Act, 46 U.S.C. § 740, to the facts.

ARGUMENT

THERE IS NO REASON FOR THE SUPREME COURT TO GRANT THE PETITION

In *Victory Carriers, Inc. v. Law,* 404 U.S. 202 (1971), this Court defined the limits to which the Extension of Admiralty Jurisdiction Act, 46 U.S.C. 740 (1948), could be used as a vehicle to extend maritime jurisdiction and the application of federal maritime law shoreward from the gangplank in instances of shoreside longshoremen injuries. Both the *Sacilotto* and *Pryor* litigations present straightforward applications of this Court's holdings in *Victory Carriers, Inc. v. Law,* construing the Admiralty Extension Act. The decisions below were correct. They present no conflict of decisions in the Circuits and no important question of law for review by this Court. This is particularly true because the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act have rendered moot the questions presented as to any subsequent cases. A longshoreman no longer has a maritime cause of action against a vessel for unseaworthiness. 33 U.S.C.A. § 905(b); *Hite v. Maritime Overseas Corporation,* 375 F. Supp. 233 (E.D. Texas 1974).

Both Sacilotto and Pryor alleged that their injuries stemmed from defects in the packaging or stowage of goods in a railroad car by some inland shipper. Both

concede that there were no defects in the ship or in the ship's gear which caused injury. The Admiralty Extension Act extends admiralty jurisdiction (and the federal maritime law) "to include all cases of damage or injury, to person or property, *caused* by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." 46 U.S.C. § 740. (Emphasis supplied.) Thus, the controlling question in both cases was whether the vessel *caused* the injuries.

In *Victory Carriers, Inc. v. Law*, this Court held that admiralty jurisdiction (and the federal maritime law) did not extend to the claim of a longshoreman injured by a forklift on the pier, even though it was being used to move cargo to be loaded on the ship. As this Court stated:

> "The question presented here is whether state law or federal maritime law governs the suit of a longshoreman injured on a pier while driving a forklift truck which was *moving cargo that would ultimately be loaded aboard ship.*" (Emphasis supplied) 404 U.S. 202, 202-03.

In making clear that causation by a ship on navigable waters, and not the function of the longshoreman in moving cargo at the time of the injury, was the basic requirement for application of the maritime federal law, this Court said:

> "The decision in *Gutierrez* [*v. Waterman Steamship Corp.*, 373 U.S. 206 (1963)] turned, not on the 'function' the stevedore was performing at the time of his injury, but rather upon the fact that *his injury was caused by an appurtenance to the ship*, the defective cargo containers, which the court held to be 'injury to person * * * caused by a vessel on navigable water' which was consummated ashore under 46 U.S.C. § 740. The court has never approved an unseaworthiness recovery for an injury sustained on land merely because the injured longshoreman was engaged in the process of loading or unloading." (Emphasis supplied) 404 U.S. at 210-11.

In considering whether the injury to Law was *caused* by a vessel on navigable waters, this Court pointed out facts which it deemed controlling, and which are almost identical to the findings of fact in the instant cases:

> "In the present case, however, the typical elements of a maritime cause of action are particularly attenuated: Respondent Law was not injured by equipment that was part of the ship's usual gear or that was stored on board, the equipment that injured him was in no way attached to the ship, the forklift was not under control of the ship or its crew, and the accident did not occur aboard ship or on the gangplank." 404 U.S. 202, 213-14.

The instant cases present straightforward applications of *Victory Carriers, Inc. v. Law.* The controlling question in both was whether the *cause* of the injury occurred on a ship on navigable water.

In *Sacilotto,* the essential facts were undisputed. (Appendix to Petition, p. 19.) On the undisputed facts, Sacilotto has candidly admitted that the entire cause of his injury was the improper loading by the inland shipper who initially loaded the billets in the gondola car. In *Pryor,* the facts were not undisputed. Although Pryor also charged his injury to improper acts by the inland shipper who initially loaded the coils in the gondola car, American President Lines denied that the coil in question had been improperly banded. The District Court found that Pryor had failed to carry his burden of proof of facts showing either negligence or unseaworthiness. It found no evidence whatsoever of

negligence. It found no indication of a defect in the ship's gear and nothing unsafe about the plan of operations, *and failed to find anything wrong with the coil.* (Appendix to Petition, p. 6.) Therefore, the *Pryor* petition is presented to this Court in a posture where both the trial court and the Court of Appeals have found that Pryor failed to prove facts necessary to even raise the issue which Pryor now seeks to pursue through this Petition.

CONCLUSION

The questions presented in the Petition have been decided by this Court, present no conflict of decisions in the Circuits and are no longer significant under the existing law. It is, therefore, respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

DISTRICT COURT'S MEMORANDUM OPINION AND ORDER IN *SACILLOTTO*

Henry A. Sacillotto has brought suit in this Court seeking to have it exercise its Admiralty jurisdiction, Fed. R. Civ. P. Rule 9h[1], in regard to an injury which he suffered in an accident while he was engaged in loading the SS Chenab. The Defendants have moved alternatively to dismiss the case for want of jurisdiction or for summary judgment. For the reasons set out below, Defendant's motion to dismiss will be granted and the case dismissed.

The essential facts of this case are undisputed. Plaintiff, a longshoreman, was engaged in the loading process as an employee of the stevedore (third party defendant), John T. Clark & Co. At the time of the occurrence in question, Plaintiff and his work gang were endeavoring to remove from an open top gondola car, which was sitting alongside the SS Chenab, twenty foot long steel billets measuring four inches by four inches in width. These billets had been placed in the gondola car by the shipper[2] in two stacks, for balance, one over each set of wheels, and were stacked loosely or had been placed in the gondola car with wooden chocks to separate them while still red hot, *causing the chocks to burn out. In any event, they were "dumped in there loose"* (Plaintiff's deposition at p. 12) at the time of the unloading of the gondola and loading of the ship.

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[1] Plaintiff also seeks to invoke diversity jurisdiction but since complete diversity does not exist, this Court is without such jurisdiction.

[2] The shipper was alleged to have been either United States Steel or Bethlehem Steel.

Plaintiff's job on this particular day was to take a "breaking out" wire and place it underneath eighteen billets at a time which were then lifted up slightly allowing Plaintiff to put a wooden chock under the bunch. The lifting was performed by the ship's boom. Normally, after the chock is put in, the billets are lifted higher and the wire is moved further along to prevent slippage and then a chock is placed under the other end of the batch by another longshoreman to allow chains to be placed around the group of billets for lifting onto the ship. When the billets were lifted after chocking, a loose billet, one not in the batch being lifted, *which had been bowed from the weight of the billets above it, sprang up and hit Plaintiff injuring him.* (Plaintiff's deposition at p. 26). According to Plaintiff, the actual cause of the accident was the failure to have chocks between the billets while in the gondola car and thus allowing such a bowing to occur from the weight of the billets scattered above it. (Plaintiff's deposition at pp. 32-35). He testified that such bowing *often occurs in unchocked loads but is unlikely to occur when chocks are properly placed between them.* (Plaintiff's deposition at p. 34). He further testified that the unloading was being done in the normal manner and that the ship's gear was working properly. (Plaintiff's deposition at pp. 25-26).

In his complaint, Plaintiff proceeded to allege in boiler plate fashion both the negligence of the Defendants and unseaworthiness of the vessel each based upon five possible theories (among others):

a. failing to provide the Plaintiff with a safe place to work;

b. failing to supply the Plaintiff with proper gear and safety equipment for working said cargo;

c. failing to provide the Plaintiff with a sufficient number of competent co-workers;

d. failing to inspect the working area where the work was performed so as to warn the Plaintiff of the dangerous conditions thereon;

e. failing to have a safe plan of operation.

In his answers to the interrogatories propounded to him, Plaintiff specified that his claim of unseaworthiness of the SS Chenab arises from ship Defendant's:

1. failure to have a safe plan of operation in allowing the going cargo to be placed in the unsafe and dangerous condition;
2. failure to properly inspect the working area;
3. failure to warn Plaintiff of the dangerous and unsafe condition of the billets; and
4. failure to supply a safe place to work.

Thus, Plaintiff apparently has abandoned theories b and c of his unseaworthiness allegation.

Unseaworthiness arising from failure to inspect and warn of the discovered dangerousness of the going cargo is factually inapplicable since Plaintiff himself testified at deposition to having had a full awareness of the danger prior to the accident. (Plaintiff's deposition at p. 24). The same reasoning would apply to these two theories of negligence.

Again from the facts it appears that neither the alleged failure to supply proper gear and safety equipment nor a sufficient number of competent co-workers contributed in any way to the accident. Plaintiff testified that the equipment was working properly and no demonstration has been made of a causal nexus between the actions or inactions of a co-worker and the injury to Plaintiff or that the use of an additional co-worker might have prevented the accident.

Thus, the only remaining theories which are factually suitable for discussion of their legal merit are:

I. Negligence.
   A. Failure to provide a safe place to work.
   B. Failure to provide a safe plan of operation.

II. Unseaworthiness.
   A. Failure to provide a safe place to work.
   B. Failure to provide a safe plan of operation in allowing the going cargo to be placed in an unsafe and dangerous condition.

Each of these possible theories is merely an attempt to put into "legalese" this basic question: Whether the ship can be held responsible for an injury to a longshoreman loading the ship which was the result of the cargo having been placed into a gondola for transport to the ship in a dangerous fashion where the injury occurs during that phase of the loading operation which transpired on shore. In other words, does the failure by the shipowners to prevent the shipper's negligence from injuring Plaintiff either by developing a suitable plan of operation or possibly insisting that the shipper properly load the cargo in the gondola (i.e. require the gondola be a safe place to work), give rise to liability of the shipowner?

It is clear that a defective or unsafe plan of operation for loading the ship can render a ship unseaworthy. *Tucker v. Calman Steamship Corporation,* 457 F.2d 440 (4 Cir. 1972). Similarly, the failure to provide a reasonably safe place to work can render a ship unseaworthy. *Croley v. Matson Navigation Company,* 439 F.2d 788 (5th Cir. 1971), *Calderola v. Cunard Steamship Co.,* 279 F.2d 475 (2 Cir. 1960). Either theory may, of course, constitute actionable negligence and generally, these duties are non-delegable. *Petterson v. Alaska S.S. Co., Inc.,* 205 F.2d 478 (9 Cir.), *aff'd Alaska S.S. Co., Inc. v. Petterson,* 347 U.S. 396 (1954), M. Norris, *Maritime Personal Injuries* 2d Ed. at p. 83 (1966).

However, the jurisdictional question is more difficult, because while there may arguably be theoretical tort or liability of the ship under these facts, the admiralty jurisdiction of the court will not be as extensive. Thus, it is possible to spell out a "good" claim sounding in negligence or unseaworthiness and yet not fall within the jurisdiction of the Court. Such distinctions must be drawn as a result of recent Supreme Court "teaching" on the subject of the shoreward extent of admiralty jurisdiction.

In *Gutierrez v. Waterman S.S. Corp.,* 373 U.S. 206 (1962) the Court found that the Extension of Admiralty Jurisdiction Act, 62 Stat. 496, 46 U.S.C. § 740 which provides that vessels on navigable water are liable for damage or injury "notwithstanding that such damage or injury be done or consummated on land" was the proper jurisdictional basis upon which a longshoreman could recover where he was injured during the unloading process when he slipped on beans spilled from a defective cargo container which had been part of the ship's cargo. The Court stated that since the ship was "negligent in allowing the beans to be unloaded in their defective bagging, when it knew or should have known that injury was likely to result . . ." coupled with the breach of its absolute, non-delegable duty towards the longshoreman engaged in the unloading process, the ship was liable. (At p. 210-211). The Court specifically rejected the reading of the statute which would have limited the reach of the statute

> "to injuries actually caused by the physical agency of the vessel or a particular part of it — such as when the ship rams a bridge or when its defective winch drops some cargo onto a longshoreman." (P. 209-210).

The Court's specific holding was:

> "the case is within the maritime jurisdiction under 46 U.S.C. § 740 when, as here, it is alleged that the shipowner commits a tort while or before the ship is being unloaded, and the impact of which is felt

> ashore at a time and place not remote from the wrongful act." (At. p. 210, footnote omitted).

As the law stood after *Gutierrez*, the facts of the instant case would seem to fall within the admiralty jurisdiction insofar as the ship was arguably negligent in not insisting upon proper chocking by the shipper or devising a safe plan to deal with unchocked loads, and the impact of this arguable negligence was felt ashore during loading nowise remote in time or place. However, *Victory Carriers, Inc. v. Law*, 404 U.S. 202 (1971) restricts the applicability of the *Gutierrez* approach and renders this case without the reach of the Extension Act.

Law involved an injury to a longshoreman who was engaged in the loading process who was injured when the overhead protection rack of the forklift he was operating on the pier alongside the ship came loose and fell on him due to its defective condition. The Supreme Court held that a longshoreman may not recover "in admiralty when he is injured on the dock by his *employer's equipment* at the time he is engaged in the service of a ship located on navigable waters." (At p. 210, emphasis added). They then distinguished *Gutierrez* by saying:

> The decision in *Gutierrez* turned, not on the "function" the stevedore was performing at the time of his injury but, rather, upon the fact that his injury was caused by an *appurtenance of a ship*, the defective cargo containers . . . (P. 210-211, emphasis added).

Thus, where the injury is caused by something unrelated to the ship (e.g. defective forklift) there is no jurisdiction, but where it is caused by an appurtenance of the ship (e.g. unloaded cargo) there is jurisdiction. In the instant case, the steel billets had not as yet been rendered cargo and were therefore not an appurtenance of the ship so that this shorebased injury is not within the shoreward extension of admiralty jurisdiction occasioned by the Act as articulated by the *Gutierrez* case. This is so since the ship is charged with

warranting the manner in which the cargo is stowed on board, *Richard v. Ellerman & Bucknall S.S. Co.*, 278 F.2d 704 (2 Cir. 1960) but not the cargo itself, *Morales v. City of Galveston*, 370 U.S. 165 (1962), and since the billets were not yet an appurtenance of the ship (anymore than was the gondola car in which they were brought alongside) this warranty cannot extend to them nor can the logic of *Gutierrez*. The defect of being improperly placed in the gondola car while alongside the ship awaiting loading on to the ship is not a breach of the stowage warranty (for indeed it was the shipper, not the ship, who stowed the billets in the gondola improperly) nor is it an injury caused by the ship or its appurtenances (since the clear cause of the injury was the manner in which the billets were stowed in the gondola).

As noted in note one, above, Plaintiff also sought to invoke the diversity jurisdiction of this Court, 28 U.S.C. § 1332. However, since Plaintiff has named as a party-defendant a Maryland corporation, John S. Connor, Inc.[3], there is no complete diversity and thus the Court is without jurisdiction.

It should be noted, that this point was raised by counsel for the defendant United States Steel early on in the proceedings and Plaintiff has made no attempt to conform his pleadings to the requirements of § 1332. Therefore, the lack of diversity, coupled with the lack of admiralty jurisdiction renders this Court without subject matter jurisdiction and the complaint must be dismissed.

R. DORSEY WATKINS,
United States District Judge.

May 30, 1974

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[3] See transcript February 25, 1972, at p. 4.

DISTRICT COURT'S OPINION IN *PRYOR*

(The Court) Good afternoon.

Gentlemen, before we proceed with the taking of evidence in Civil Action Number 71-76HM, the Court has had an oral motion filed in Civil Number 71-351 HM which should be ruled on at this time. The motion is one made under Rule 41(b) of the Federal Rules of Civil Procedure by the Defendant American President Lines.

Rule 41(b) provides that after the Plaintiff in an action tried by the Court without a jury has completed the presentation of his evidence, the Defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law, the Plaintiff has shown no right to relief.

The suit by the Plaintiff, Marion L. Stephens, initially was brought against American President Lines by him under Rule 9(h) of the Federal Rules, and following the later death of Mr. Stephens, and filing of a Suggestion of Death on the record, the present named Plaintiff, Raymond E. Pryor, as Personal Representative, was substituted for Mr. Stephens. The suit sought damages for an injury to Mr. Stephens which occurred as the vessel S. S. PRESIDENT PIERCE was in the course of being loaded at the Pennwood Wharf in Baltimore on the 12th day of September, 1969.

At the time we are concerned with, the Plaintiff was a longshoreman employed by the Nacirema Operating Company of Baltimore. There were coils of steel wire being loaded onboard the vessel from a railroad gondola car at the time of the incident with which we are concerned. The coils of wire were apparently stowed in the gondola car in two rows of coils laid end to end in the floor of the car, and then one row of coils above the two in the bottom of the car. The particular load that was being taken aboard the vessel at the time was from the top row of coils in the car.

The only evidence with regard to how the accident occurred is that of the deceased original Plaintiff, Marion L. Stephens, whose deposition, taken on December the 15th, 1972, has been entered in evidence as Plaintiffs' Exhibit Number 1. I will refer to that deposition in a moment, but first I would like to point out that in the complaint as originally filed in the case, the occurrence of the accident is briefly described in paragraph five of the complaint as having occurred as follows "that in the course of discharging his duties as a longshoreman, the Plaintiff was in a gondola car when suddenly a coil of wire which was being raised out of the gondola car by a crain caught the Plaintiff, knocking him off of the gondola car, injuring him."

There are two other statements in the Court's file which contain the contentions of the Plaintiff as to how the incident occurred and those statements are contained in two separate pretrial orders, one filed December the 15th, 1972, and the other on March the 15th, 1974. In the first of those two pretrial orders, paragraph one, which sets out the factual contentions of the Plaintiff, states that the Plaintiff intends to prove that on the 12th day of September, 1969, he was employed as a longshoreman and that in the performance of his duties as a longshoreman, he was on top of a gondola car, assisting in loading coils of wire, and that after hooking up a draft of wire, the said draft was raised by the ship's winches. As it was being raised, an end of a coil of wire which was not banded and which had been intertwined with the coil being raised suddenly broke loose and caught the Plaintiff's leg, knocking him from the gondola car to the ground, a distance of approximately 18 feet.

In the most recent pretrial order, that filed on March the 15th, 1974, the statement of how the accident occurred is very similar to that in paragraph 5 of the complaint. It reads in the pretrial order as follows "While in the course of discharging his duties, he was in a gondola car when a coil of wire being raised out of

the car by a crane caught him and knocked him off the gondola car, injuring him."

The difficulty with the three versions of the accident as I have just read them, one from the complaint and two from the pretrial orders, is that the facts on which the Court must proceed don't agree with those statements. The only hard evidence as to how the accident occurred is that contained in the deposition of Marion Stephens taken on December the 15th, 1972. There are two places in that deposition which describe the occurrence of the accident. The first, at pages 11 and 12 of the deposition, contain this answer by Mr. Stephens as to a question about the coil involved: The question was "now the coil that was involved here, was that a coil which you had hooked up or which Claude had hooked up? Answer: Neither one. I hooked four coils up with the wire and I hooked it back to the winch, and I told the man myself, the deck man, to take it away. Which in turn I walked down past the other coils so they could drag it back so I would be clear. And when the four coils took the weight off the other coil, it was an open end and it sprung away. And the next coil, the bitter end of the coil, caught me in the trouser leg and sprung out and flipped me right off the gondola car. I didn't even know it had me until I was on the ground."

And the second description by the deceased as to how the accident occurred is contained at pages 18 through 20 of this deposition, beginning at line 20 on page 18. And this is an answer by Mr. Stephens. "And when he pulled this wire away, this other coil shifted and sort of sprung. I guess it wasn't — Question: Now let me back up just a little bit now. When you say you were four feet away from the coils that you were hooked up to, do you mean you were four feet back of the closest — Answer: I wouldn't say exactly four feet. This is approximately. Question: Right. How far were you away from the closest part of the coil that was going to be lifted? Answer: I was completely clear of the one that was going to be lifted. Question: A foot, five feet? Answer: I would say two foot. Question: Two feet clear of the

closest end? Answer: Yes. Question: Now, when they lifted that took the strain, took the weight of that off the other coils and something shifted. Now, what shifted? Answer: I guess it was the other coil of wire. Question: On the top row? Answer: Yes. Question: In other words, sort of like an accordian, it opened up a little bit? Answer: Right. Question: It opened up? In other words, it didn't jump up in the air or settle, it shifted horizontally? Answer: Well, yes, it moved. Question: And when it opened, what happened? Answer: One of the jagged ends from the wire caught my trouser leg and just flipped me off that gondola car. Before I knew what happened, I was on the ground. I mean, you don't expect it to happen."

The evidence in the deposition also tends to indicate that the manner of lifting these coils was that a wire would be put through the center hole of the coils, and at each end of that wire was an eye which was attached to a hook at the bottom of the vessel's cargo cable, and in that way, the coils taken out of the gondola car with the power of the vessel's winch.

It seems clear to the Court, from the deceased's own testimony, that contrary to what is suggested in the complaint and at least one of the pretrial orders, that the coil of wire that caused him to fall off the gondola car was not one being lifted at the time, but rather was one that moved slightly after coils which had been threaded with this wire began to be lifted and thus lessened the tension against the remaining coils in the row on the top of the car.

Now, those are the facts in the case as the Court understands them. The next question is what legal result, if any, obtains on that state of facts.

The Plaintiff in the case, as the Court understands it, does not claim that the winch operator onboard the ship was in any way negligent in the way he started to take a strain on this load that was about to be loaded when the deceased was injured; rather, the theory of liability put forth by the Plaintiff is based on a claim of unseaworthiness. The claim of unseaworthiness appar-

ently does not relate to any defect in any of the vessel's gear or equipment; rather, it is a three-pronged claim, the first prong of which is a contention that the ship failed to supply a safe place to work; second, that the ship had accepted defective cargo; third, that there was an unsafe plan of operation, in the sense that the deceased, Marion Stephens, should have been required by the vessel owner to move further away from the cargo being loaded at the time his injury occurred.

The first question that the Court has to face in connection with this unseaworthiness claim made by the Plaintiff is whether or not the Court has jurisdiction in admiralty in this suit. The Court is satisfied that it does have admiralty jurisdiction in the matter, and I might say a word or two in that connection. The basic dividing line of jurisdiction in cases of this kind, as it has evolved under the decision in the Supreme Court in Victory Carriers, Inc. versus Law, is the end of the pier, as it is sometimes referred to, in the sense that if there is a shore-based accident involving a longshoreman or other maritime worker which is brought about by shore-based equipment, then there is no admiralty jurisdiction.

Mr. Lentz, counsel for the Plaintiff, the Court knows, is very familiar with the case of Snyder versus Villain and Fassio, which is reported in 459 Fed. 2nd 365, since he was counsel for one of the parties in three of the cases, I believe, that were decided in that appeal. The dismissal by the District Court Judge in those cases was upheld by the Court of Appeals under the authority of the Victory Carriers case because in each injury that was reviewed on that appeal, the Court noted that the injury was not caused by equipment which was part of the ship's gear, or by any equipment attached in any way to the ship, or under the control of the ship or its crew and, therefore, there was no maritime cause of action.

One of the cases reviewed in that appeal, that of William Randolph, was somewhat similar in a way to the facts in the present case, in that it involved a longshoreman who was standing in a gondola car on

the pier, and he was struck by the hook of a suddenly descending crane cable and knocked out of the gondola car onto the ground. Judge Watkins in the District Court found no admiralty jurisdiction in that case, and he was affirmed on appeal on the basis that the crane was a shore-based crane, and the accident took place on land and, therefore, there was no maritime jurisdiction.

There is a difference in the present case in the sense that we are not dealing with the shore-based cranes, we're dealing with ship's equipment in the form of a crane onboard the vessel. And, therefore, it seems to the Court that the legal basis for admiralty jurisdiction is very similar to that set out by Senior Circuit Judge Sobeloff in the case of Tucker versus Calmar Steamship Corporation in footnote one of that opinion at page 442 of 457 Fed. 2nd. In general, he pointed out, as the Court has just indicated, that where a longshoreman working on a pier is injured by shore-based equipment, there is no admiralty jurisdiction, but where the equipment being used is connected to the vessel, then there may be admiralty jurisdiction.

Now, this case, of course, does not involve actually and physically a coil being lifted by the vessel's gear at the time, but still the vessel's gear was being utilized in this loading operation, and in the Court's view, that is sufficient in this case to sustain admiralty jurisdiction. The difficulty, however, as the Court sees it, with the Plaintiff's case is that there has been a failure of proof that would sustain any claimed unseaworthiness as far as the vessel is concerned. It does not appear that there was any defect in any of the vessel's gear that was being used. It does not appear that there was any actual defect in the cargo that was being loaded at the time. Additionally, the Court is not satisfied that even if there had been specific direct proof of some defective condition of the cargo, such as improper banding of the coils, or nonexistent banding of the coils, that there has been any evidence in this case that the vessel actually accepted the coils which the Plaintiff says caused his injury, in the sense that

the longshoremen had not yet touched that coil, as far as the Court can see from the evidence, or made any attempt to try to take it onboard the vessel. It was simply an inert coil, laying on the top of the gondola car, which happened to move slightly as other coils were being lifted. The Court sees nothing unsafe with the plan of operation here. The accident apparently was an unexpected one. And the Court would not find anything from the evidence which would support a ruling that there was any responsibility on the vessel to direct Mr. Stephens to stand further away from the coils being lifted at the time this accident occurred.

In short, the Court feels that there has been a failure of proof to sustain any finding either of negligence or of unseaworthiness on the part of the vessel and, therefore, the Court would have to grant the motion under Rule 41(b) which has been filed by the Defendant American President Lines.